

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Debut Broadcasting Mississippi, Inc.)	File No.: EB-11-OR-0142
)	NAL/Acct. No.: 201232620004
Former Licensee of Stations WLTM-FM and)	FRN: 0016869919
WNIX-AM)	Facility ID Nos.: 25229, 66328
Greenville, Mississippi)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: August 1, 2012

Released: August 1, 2012

By the District Director, New Orleans Office, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (NAL), we find that Debut Broadcasting Mississippi, Inc. (Debut Broadcasting), former licensee of Stations WLTM-FM and WNIX-AM,¹ in Greenville, Mississippi, apparently willfully and repeatedly violated Sections 11.35 and 73.1745(a) of the Commission's rules (Rules)² by failing to (1) maintain operational emergency alert system (EAS) equipment, (2) maintain EAS logs, and (3) operate in a mode and power authorized by its license. We conclude that Debut Broadcasting is apparently liable for a forfeiture in the amount of fifteen thousand dollars (\$15,000).

II. BACKGROUND

2. Station WNIX-AM is authorized to operate at 1000 watts during the day and with reduced power in a directional mode at night.³ On November 7 and 8, 2011, in response to a complaint of overpower nighttime operations, agents from the Enforcement Bureau's New Orleans Office (New Orleans Office) monitored the field strength of Station WNIX-AM's transmissions before and after sunset.⁴ The agents observed no noticeable change in field strength on either day. On November 9, 2011, agents conducted inspections of co-located Stations WLTM-FM and WNIX-AM, accompanied by Debut Broadcasting's former and now Delta's current operations manager. The agents observed that Station WNIX-AM was operating with daytime power. The operations manager admitted that Station WNIX-AM's equipment was not functioning properly and was not capable of switching to nighttime mode and power. During the inspection, the agents also observed that Stations WLTM-FM and WNIX-AM were sharing EAS equipment with a third co-owned and co-located station.⁵ The equipment that switched the

¹ The assignment of Stations WNIX-AM and WLTM-FM from Debut Broadcasting to Delta Radio Network, LLC (Delta) was consummated December 21, 2011. See License File No. BAL-20110808ADB.

² 47 C.F.R. §§ 11.35, 73.1745(a).

³ See License File No. BLH-20070525ADY.

⁴ On November 7 and 8, 2011, sunset in Greenville, Mississippi was at 5:08 p.m. and 5:07 p.m., respectively.

⁵ See 47 C.F.R. 11.51(l) (allowing co-owned and co-located stations to meet EAS transmitting requirements with one EAS encoder).

EAS equipment to Stations WLTN-FM and WNIX-AM, however, was malfunctioning, thereby leaving Stations WLTN-FM and WNIX-AM with no operational EAS equipment. The operations manager admitted that it had been “some time” since the switching equipment worked and since Stations WLTN-FM and WNIX-AM had operational EAS equipment. Neither station maintained any EAS logs documenting when the EAS equipment was last operational.

III. DISCUSSION

3. Section 503(b) of the Communications Act of 1934, as amended (Act) provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation, or order issued by the Commission thereunder, shall be liable for a forfeiture penalty.⁶ Section 312(f)(1) of the Act defines “willful” as the “conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.⁷ The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,⁸ and the Commission has so interpreted the term in the Section 503(b) context.⁹ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.¹⁰ The term “repeated” means the commission or omission of such act more than once or for more than one day.¹¹

A. Failure to Maintain Operational Emergency Alert System and EAS logs

4. Every broadcast station is part of the nationwide EAS network and is categorized as a participating national EAS source.¹² The EAS enables the President and state and local governments to provide immediate communications and information to the general public.¹³ State and local area plans identify local primary sources responsible for coordinating carriage of common emergency messages from the sources such as the National Weather Service or local emergency management officials.¹⁴

⁶ 47 U.S.C. § 503(b).

⁷ 47 U.S.C. § 312(f)(1).

⁸ H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982) (“This provision [inserted in Section 312] defines the terms ‘willful’ and ‘repeated’ for purposes of section 312, and for any other relevant section of the act (e.g., Section 503) As defined[,] . . . ‘willful’ means that the licensee knew that he was doing the act in question, regardless of whether there was an intent to violate the law. ‘Repeated’ means more than once, or where the act is continuous, for more than one day. Whether an act is considered to be ‘continuous’ would depend upon the circumstances in each case. The definitions are intended primarily to clarify the language in Sections 312 and 503, and are consistent with the Commission’s application of those terms . . .”).

⁹ See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992).

¹⁰ See, e.g., *Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, para. 10 (2001) (*Callais Cablevision, Inc.*) (proposing a forfeiture for, *inter alia*, a cable television operator’s repeated signal leakage).

¹¹ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘repeated’, when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.” See *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362.

¹² 47 C.F.R. §§ 11.11, 11.41.

¹³ 47 C.F.R. §§ 11.1, 11.21.

¹⁴ 47 C.F.R. § 11.18. State EAS plans contain guidelines that must be followed by broadcast and cable personnel, emergency officials and National Weather Service personnel to activate the EAS for state and local emergency alerts. The state plans include the EAS header codes and messages to be transmitted by the primary state, local and relay EAS sources. 47 C.F.R. § 11.21.

Required monthly and weekly tests originate from EAS Local or State Primary sources and must be retransmitted by the participating station. As the nation's emergency warning system, the EAS is critical to public safety, and we recognize the vital role that broadcasters play in ensuring its success. The Commission takes seriously any violations of the Rules implementing the EAS and expects full compliance from its licensees.

5. Section 11.35(a) of the Rules requires all broadcast stations to ensure that EAS encoders, EAS decoders, and attention signal generating and receiving equipment are installed and operational so that the monitoring and transmitting functions are available during the times the station is in operation.¹⁵ Section 11.35(b) of the Rules states that “[i]f the EAS Encoder or EAS Decoder becomes defective, ... [e]ntries shall be made in the broadcast station log . . . showing the date and time the equipment was removed and restored to service.”¹⁶ Section 11.51(l) of the Rules allows co-located and co-owned stations to provide the EAS transmitting requirements for the combined stations with one EAS encoder.¹⁷ On November 9, 2011, agents from the New Orleans Office observed that the switching equipment which allowed Stations WLTM-FM and WNIX-AM to share a third co-located and co-owned station's EAS equipment was malfunctioning, thereby leaving Stations WLTM-FM and WNIX-AM with no EAS functionality. Neither station maintained any EAS logs and neither could document when its EAS equipment was last operational. Based on the evidence before us, we find that Debut Broadcasting apparently willfully and repeatedly violated Section 11.35 of the Rules by failing to maintain operational EAS equipment and EAS logs.

B. Failure to Operate within Parameters of License

6. Section 73.1745(a) of the Rules states that “[n]o broadcast station shall operate at times, or with modes or power, other than those specified and made a part of the license, unless otherwise provided in this part.”¹⁸ Station WNIX-AM is required to reduce power and switch to a directional mode at night.¹⁹ On November 7 and 8, 2011, agents from the New Orleans Office monitored Station WNIX-AM and observed that the measured field strength of its signals did not change after sunset. On November 9, 2011, agents from the New Orleans Office observed that Station WNIX-AM was operating in daytime mode with full power. The agents also learned from the operations manager that Station WNIX-AM was incapable of switching to nighttime mode and power. Thus, Station WNIX-AM did not reduce its power nor switch its directional pattern at night. Based on the evidence before us, we find that Debut Broadcasting apparently willfully and repeatedly violated Section 73.1745(a) of the Rules by operating with daytime power and in daytime mode at night.

C. Proposed Forfeiture Amount

7. Pursuant to the Commission's *Forfeiture Policy Statement* and Section 1.80 of the Rules, the base forfeiture amount for failure to maintain directional pattern within prescribed parameters is \$7,000 and for EAS equipment not installed or operational is \$8,000.²⁰ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as

¹⁵ 47 C.F.R. § 11.35(a).

¹⁶ 47 C.F.R. § 11.35(b).

¹⁷ 47 C.F.R. § 11.51(l).

¹⁸ 47 C.F.R. § 73.1745(a).

¹⁹ See License File No. BLH-20070525ADY.

²⁰ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997) (*Forfeiture Policy Statement*), recons. denied, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

justice may require.²¹ Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Debut Broadcasting is apparently liable for a total forfeiture in the amount of \$15,000, consisting of the following: \$8,000 for EAS violations and \$7,000 for operating with daytime power and in daytime mode at night.

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.204, 0.311, 0.314, and 1.80 of the Commission's rules, Debut Broadcasting Mississippi, Inc. is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of fifteen thousand dollars (\$15,000) for violations of Sections 11.35 and 73.1745(a) of the Rules.²²

9. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's rules, within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, Debut Broadcasting Mississippi, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

10. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Debut Broadcasting Mississippi, Inc. shall also send electronic notification on the date said payment is made to SCR-Response@fcc.gov. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.²³ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

11. Any request for full payment under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.²⁴ If you have questions regarding payment procedures, please contact

²¹ 47 U.S.C. § 503(b)(2)(E).

²² 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80, 11.35, 73.1745(a).

²³ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

²⁴ See 47 C.F.R. § 1.1914.

the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

12. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to Sections 1.16 and 1.80(f)(3) of the Rules.²⁵ Mail the written statement to Federal Communications Commission, Enforcement Bureau, South Central Region, New Orleans Office, 2424 Edenborn Ave., Suite 460, Metairie, LA 70001, and include the NAL/Acct. No. referenced in the caption. Debut Broadcasting Mississippi, Inc. also shall email the written response to SCR-Response@fcc.gov.

13. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (GAAP); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

14. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by both Certified Mail, Return Receipt Requested, and First Class Mail to Debut Broadcasting Mississippi, Inc. at 1011 Cherry Ave., Suite B, Nashville, TN 37203.

FEDERAL COMMUNICATIONS COMMISSION

Walter Gernon
District Director
New Orleans
South Central Region
Enforcement Bureau

²⁵ 47 C.F.R. §§ 1.16, 1.80(f)(3).